

(3) Acquisition of property under § 712.204(d) shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

(4) Ultimate Federal participation in the cost of property acquired under § 712.204(d) is dependent upon the incorporation of such property in the final highway right-of-way. Where a parcel is partially incorporated, Federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 CFR 710.304(m).

(5) Subject to paragraphs (d)(2) and (3) of this section, a SHD may acquire property with its own funds under § 712.204(d) before FHWA program approval and not jeopardize Federal participation in subsequent project costs provided the SHD's acquisition activities comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), and 49 CFR part 24. Costs so incurred are not eligible for Federal participation.

(e) *Public hearings.* Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings, in order to assure that the public is adequately informed.

(f) *Project field inspections.* Right-of-way personnel shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right-of-way elements involved in the location and design of the project including possible social, economic, and environmental effects.

(g) *Right-of-way project agreements.* (1) Project agreements and modifications thereof shall be prepared and executed in accordance with part 630, subpart C of this chapter.

(2) Project agreements may be entered into at any time after Federal funds have been obligated on the project. The estimate of cost of right-of-way required for programming a project may be used for project agreement purposes, provided a more accu-

rate and up-to-date estimate is not available.

(3) Project agreements covering acquisition of right-of-way shall, pursuant to 23 U.S.C. 108(a), contain a clause providing for the refund of any payments made by the FHWA in the event that actual construction of a road on such rights-of-way is not undertaken by the close of the 10th fiscal year following the fiscal year in which the agreement was executed. Pursuant to a State's written request, FHWA may approve a longer period which is determined to be reasonable. The SHD will be considered in compliance with the statutory requirements where, before the expiration of the approved period, it has taken all of the following actions:

(i) Awarded a contract for construction of a reasonable section of the highway covered by the agreement,

(ii) Proceeded with sufficient actual work to give visual evidence thereof at the construction site, and

(iii) Provided evidence of good faith to proceed without delay to complete construction of the highway upon the entire length of right-of-way covered by such project agreement.

[39 FR 29591, Aug. 16, 1974, as amended at 40 FR 33445, Aug. 8, 1975; 41 FR 9321, Mar. 4, 1976; 41 FR 24347, June 16, 1976; 42 FR 26652, May 25, 1977; 50 FR 34092, 34093, Aug. 23, 1985; 52 FR 32669, Aug. 28, 1987; 54 FR 47076, Nov. 9, 1989]

Subpart C—[Reserved]

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

SOURCE: 39 FR 29593, Aug. 16, 1974, unless otherwise noted.

§ 712.401 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies relating to settlement of acquisitions through administrative means and legal processes.

§ 712.402 Definitions.

As used in this subpart:

(a) *Administrative settlement.* Any settlement, made or authorized to be made by the responsible State highway

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department (SHD) official, which is in excess of the SHD's approved estimate of just compensation.

(b) *Legal settlement.* Any settlement made by the responsible State legal representative. This includes stipulated settlements approved by the court in which the condemnation action has been filed.

(c) *Court award.* Any decision following a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

§ 712.403 Applicability.

The provisions of this subpart are applicable in the acquisition of real property for a highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally-assisted highway projects are governed by the provisions of 49 CFR 24.102(i).

[50 FR 34092, Aug. 23, 1985, as amended at 54 FR 47076, Nov. 9, 1989]

§ 712.405 Legal settlements.

(a) The SHD shall identify the legal office or official responsible for making legal settlements. The coordination which will be followed between the legal office and the right-of-way office prior to making any settlement shall be described.

(b) The legal office or official may make a legal settlement when it is determined that such action is in the public interest. Legal settlements which are based upon new or revised appraisal data as the principal justification shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over the right-of-way matters.

(c) The appropriate State file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in legal settlements

made and documented in accordance with the provisions of this paragraph.

§ 712.406 Court awards.

Federal funds may participate in excess of the amount established as just compensation if there is supporting documentation in the appropriate State file which includes:

(a) A trial report, signed by the trial attorney.

(b) A signed statement of the legal counsel in charge of representing the State in condemnation litigation stating his concurrence in the reasoning and disposition of the case.

§ 712.407 Noncompensable items.

Should the administrative settlement, legal settlement or the court award include an apparent payment for items considered ineligible for Federal participation, the amount paid for such items shall be determined by the SHD and excluded from the SHD's claim for Federal participation in the settlement or award.

§ 712.408 Special counsel.

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

(b) Federal participation shall not be permitted in payment made to a city or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of property for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

[39 FR 29593, Aug. 16, 1974; 39 FR 34277, Sept. 24, 1974, as amended at 59 FR 25327, May 16, 1994]